IN THE

# Supreme Court of the United States

OCTOBER TERM, 1968

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No. 777

THE FIRST NATIONAL BANK IN PLANT CITY, PLANT CITY, FLORIDA, *Petitioner*

v.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, ET AL.

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No. 932

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, *Petitioner*

v.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA, ET AL.

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## MOTION FOR LEAVE TO FILE A BRIEF FOR The First National Bank of Cornelia, Georgia, et al. AS AMICI CURIAE In Support of Petitions for Writs of Certiorari

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The following national banks hereby respectfully move for leave to file a brief as Amici Curiae in the above-entitled cases in support of the petitions for writs of certiorari already filed by the First National Bank in Plant City, Plant City, Florida, in No. 777

and by the Solicitor General of the United States on behalf of William B. Camp, Comptroller of the Currency of the United States, in No. 932:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION
San Francisco, California 94120

CANAL NATIONAL BANK
188 Middle Street
Portland, Maine

CONTINENTAL NATIONAL BANK OF FORT WORTH
Houston at Seventh
P. O. Box 910
Fort Worth, Texas 76101

EXCHANGE NATIONAL BANK OF CHICAGO
130 South LaSalle Street
Chicago, Illinois 60690

FIRST AGRICULTURAL NATIONAL BANK OF BERKSHIRE COUNTY
City of Pittsfield,
Massachusetts

FIRST NATIONAL BANK OF ARIZONA
411 North Central Avenue
Phoenix, Arizona

FIRST NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York, New York

FIRST SECURITY NATIONAL BANK OF BEAUMONT
505 Orleans Street
Beaumont, Texas 77704

FIRST UNION NATIONAL BANK OF NORTH CAROLINA
301 South Tryon Street
Charlotte, North Carolina

IDAHO FIRST NATIONAL BANK
205 North Tenth Street
Boise, Idaho 83707

MANUFACTURERS NATIONAL BANK OF DETROIT
151 West Fort Street
Detroit, Michigan 48226

NATIONAL BANK OF DETROIT
611 Woodward Avenue
Detroit, Michigan 48232

NORTH CAROLINA NATIONAL BANK
200 South Tryon Street
Charlotte, North Carolina

PEOPLES FIRST NATIONAL BANK
Miami Shores, Florida

THE CHASE MANHATTAN BANK
(NATIONAL ASSOCIATION)
1 Chase Manhattan Plaza
New York, New York 10015

THE FIRST NATIONAL BANK OF CHICAGO
38 South Dearborn Street
Chicago, Illinois

THE FIRST NATIONAL BANK OF CORNELIA
119 South Main Street
Cornelia, Georgia

THE HOWARD NATIONAL BANK AND TRUST COMPANY
111 Main Street
Burlington, Vermont 05401

THE INDIAN HEAD NATIONAL BANK OF NASHUA
146 Main Street
Nashua, New Hampshire 03060

THE STATE NATIONAL BANK OF CONNECTICUT
2834 Fairfield Avenue
Bridgeport, Connecticut 06605

VIRGINIA NATIONAL BANK
One Commercial Place
Norfolk, Virginia

WESTERN PENNSYLVANIA NATIONAL BANK
435 Smithfield Street
Pittsburgh, Pennsylvania 15222

Counsel for Petitioners have consented to the filing of the attached brief. The consent of Counsel for Fred O. Dickinson, Jr., Comptroller of the State of Florida, and of Counsel for the intervening state banks, Respondents in both cases, was requested but refused.

The interests of Amici and their reasons for requesting leave to file a brief are set forth in the attached brief.

This Motion and Brief are filed at a late date (though prior to the filing of Respondents' Briefs in Opposition) for two reasons. First, some of the developments upon which this Brief are based did not occur until quite recently. For example, the Solicitor General did not file his Petition in No. 932 until January 10, 1969; Mr. Justice Black did not stay the order in the *Bank of Cornelia* case, *infra*, until December 16, 1968; and the ruling of the Attorney General of North Carolina, referred to *infra,* was not rendered until December 23, 1968. Secondly, it has taken a substantial amount of time for these various actions and rulings to be circulated to the 22 Amici, for this Brief to be prepared, and for concurrence to be obtained from the Amici, located in all parts of the country.

Respectfully submitted,

E. Barrett Prettyman, Jr.
Hogan & Hartson
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
*Attorney for Amici Curiae*

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## BRIEF ON BEHALF OF

**The First National Bank of Cornelia, Georgia, et al.**

## AS AMICI CURIAE

**In Support of Petitions for Writs of Certiorari**

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### QUESTION PRESENTED

(as stated by the Solicitor General)

Whether, for purposes of the reference in 12 U.S.C. 36(c) to state law as controlling the permissibility of a national bank "branch", the statutory scheme, in-

cluding the definition of "branch" in 12 U.S.C. 36(f), permits state rules also to control the threshold determination of what banking activities constitute a "branch".

## INTEREST OF AMICI CURIAE

All 22 Amici Curiae joining in this brief are national banks. Their home offices are located in 17 states. Some operate branches—as many as 117 different offices—and some do not. All carry on activities which either already have been or could possibly be affected by the ruling in *Dickinson* or by a logical extension of that ruling by state Banking Commissioners in the various states. In fact, as shown in the "Reasons for Granting the Writs" below, state officials, relying on *Dickinson,* have already challenged national bank activities in several states affecting some of the Amici banks. All of the Amici Curiae, therefore, have an immediate and direct interest in this Court's review of the *Dickinson* decision and in a reversal of the Fifth Circuit's judgment and decision in that case.

The Amici Curiae national banks joining in this brief are the following:

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION
San Francisco, California 94120

CANAL NATIONAL BANK
188 Middle Street
Portland, Maine

CONTINENTAL NATIONAL BANK OF FORT WORTH
Houston at Seventh
P. O. Box 910
Fort Worth, Texas 76101

EXCHANGE NATIONAL BANK OF CHICAGO
130 South LaSalle Street
Chicago, Illinois 60690

FIRST AGRICULTURAL NATIONAL BANK
OF BERKSHIRE COUNTY
City of Pittsfield,
Massachusetts

FIRST NATIONAL BANK OF ARIZONA
411 North Central Avenue
Phoenix, Arizona

FIRST NATIONAL CITY BANK OF NEW YORK
55 Wall Street
New York, New York

FIRST SECURITY NATIONAL BANK OF BEAUMONT
505 Orleans Street
Beaumont, Texas 77704

FIRST UNION NATIONAL BANK OF NORTH
CAROLINA
301 South Tryon Street
Charlotte, North Carolina

IDAHO FIRST NATIONAL BANK
205 North Tenth Street
Boise, Idaho 83707

MANUFACTURERS NATIONAL BANK OF DETROIT
151 West Fort Street
Detroit, Michigan 48226

NATIONAL BANK OF DETROIT
611 Woodward Avenue
Detroit, Michigan 48232

NORTH CAROLINA NATIONAL BANK
200 South Tryon Street
Charlotte, North Carolina

PEOPLES FIRST NATIONAL BANK
Miami Shores, Florida

THE CHASE MANHATTAN BANK
(NATIONAL ASSOCIATION)
1 Chase Manhattan Plaza
New York, New York 10015

THE FIRST NATIONAL BANK OF CHICAGO
38 South Dearborn Street
Chicago, Illinois

THE FIRST NATIONAL BANK OF CORNELIA
119 South Main Street
Cornelia, Georgia

THE HOWARD NATIONAL BANK AND TRUST COMPANY
111 Main Street
Burlington, Vermont 05401

THE INDIAN HEAD NATIONAL BANK OF NASHUA
146 Main Street
Nashua, New Hampshire 03060

THE STATE NATIONAL BANK OF CONNECTICUT
2834 Fairfield Avenue
Bridgeport, Connecticut 06605

VIRGINIA NATIONAL BANK
One Commercial Place
Norfolk, Virginia

WESTERN PENNSYLVANIA NATIONAL BANK
435 Smithfield Street
Pittsburgh, Pennsylvania 15222

## STATEMENT

The Amici Curiae agree with and incorporate herein the Statements of the Petitioners in Nos. 777 and 932.

## REASONS FOR GRANTING THE WRITS

The Amici banks entirely agree with and support the reasons for granting the writs already advanced by Petitioners. It is the position of the Amici, however, that both petitions failed to acquaint the Court with certain recent developments in the administration of the banking laws of the various states which have already grown out of the *Dickinson* case, and also failed

to emphasize the great disparity in state banking laws and practices which, if *Dickinson* is allowed to stand, could become incorporated into federal law and disrupt the operation of national banks across the country.

Neither petition, for example, mentioned the recent case of *Jackson* v. *First National Bank of Cornelia, Georgia,* N. D. Ga., Cir. No. 1191 (October 21, 1968), in which the District Court relied entirely on the *Dickinson* opinion. The suit was filed by the Superintendent of Banks of the State of Georgia and a number of intervening state banks, seeking to enjoin the First National Bank of Cornelia, Georgia, from operating an armored car bank messenger service in parts of Georgia and North Carolina. The complaint alleged that this service constituted illegal mobile branch banking under 12 U.S.C. §§ 24 (Seventh), 36(c), (f), and Title 13 of the Code of Georgia, § 201 *et seq.* The bank answered and counterclaimed for an injunction and declaratory judgment. The Comptroller of the Currency of the United States intervened as a defendant in support of the bank. Following a hearing, the District Court made findings of fact and permanently enjoined the bank from engaging in its armored car bank messenger service, even if the service is carried out under an agreement providing that the armored car messenger is the agent of the customer and not of the bank. On December 16, 1968, Mr. Justice Black stayed the District Court's order pending final disposition of the instant case. Similarly, the Fifth Circuit has deferred all further appeal proceedings in its own court in the *Bank of Cornelia* case until *Dickinson* has been resolved.

The District Court in *Bank of Cornelia* held that the purpose of 12 U.S.C. § 36(c) is to place national

and state banks on a basis of "competitive equality," and that this "is accomplished by adopting, in full, the state branch banking law as federal law in the various states." Branch banks are defined by Georgia law as "any additional place of business of any parent bank not located within the particular city * * * where its parent bank was chartered". Ga. Code § 13-201.1 (b). Georgia law prohibits the establishment of any new or additional branch bank anywhere in the State after February 9, 1960. Ga. Code § 13-203(c). In addition, a parent bank in Georgia may operate only one additional bank office or facility within the particular city where the parent bank is situated if that city has a population not exceeding 40,000. Ga. Code § 13-203.1. These provisions of the Georgia law were incorporated into "federal law" by the District Court, relying specifically upon *Dickinson*.

The District Court held that it must accept the position of the Georgia Superintendent of Banks, because "there is no decision of the Georgia Supreme Court contrary to this interpretation * * *." Thus, the District Court concluded that the Bank of Cornelia's armored car bank messenger service was illegal because it constituted not only branch banking prohibited by Georgia law but also the carrying on of a banking business through banking facilities other than on the premises of the bank's place of business, also prohibited by Georgia law.

The effect of this decision, if allowed to stand by a denial of certiorari or an affirmance in *Dickinson*, would be to bar for all time not only the armored car messenger services of national banks in Georgia but also the expansion of such banks beyond the borders

of their immediate cities. Further, the extent of the ruling is demonstrated by the response of the District Court to the following remarks made during oral argument:

> It's undisputed in the record here that Georgia banks can and do conduct many off-premises activities: officer call programs at a place of business to solicit loans and deposits; calls on new customers; trust representatives calling off-premises on potential or existing trust customers; participation in loan closings, again off-premises; visits to and assisting sometimes in the management with or of correspondent banks; foreign branches overseas conducted by both State and National Banks, or participation in corporations organized under the Edge Act to conduct foreign banks; credit cards. [Transcript of Sept. 26, 1968 hearing, pp. 12-13.]

The Court's response was that the Georgia Superintendent, under the *Dickinson* decision, could declare each of these activities by national banks to be illegal. *Id.* at 18. Thus, *every* off-premises activity by a national bank is now subject to attack by state commissioners, if the *Dickinson* and *Bank of Cornelia* decisions become binding law. The chaos that may well result can hardly be overstated.

As a matter of fact, the impact of the *Bank of Cornelia* decision even on the communities served by the Bank's armored car service would be devastating. As shown by the District Court's findings, the Bank's three armored trucks make 1,415 different calls on 505 separate customers every week. This service has been provided for more than two years. The trucks pick up cash and checks for the purpose of transporting them to the bank, carry small bills and coins for

changing larger bills, transport cash to certain customers, and provide a payroll cashing service to a number of customers. Of the ten counties covered by this armored truck service, every one is located in Appalachia, recognized by the Government as one of the most destitute sections of the United States. The hundreds of businesses served by these trucks are almost exclusively small ones, and most are located in rural or mountain areas from five to twenty miles away from the nearest town and the nearest bank. Thus, personal deliveries of money to and from the bank would be not only difficult but extremely hazardous.

As in the instant case, the Bank of Cornelia's armored car messenger service has been operated pursuant to a specific ruling by the Comptroller of the Currency of the United States to the effect that such a service is legal so long as an agreement between the bank and its customers specifies that the messenger is the agent of the customer (Comptroller's Manual, par. 7490). The District Court found that such agreements have been in effect between the bank and its customers. Nevertheless, the service was outlawed pursuant to the *Dickinson* ruling.

Recent developments in other states demonstrate that the situation in Florida and Georgia is not unique to those states and that the trend begun there may well accelerate if *Dickinson* is allowed to stand. Thus, the Attorney General of North Carolina, specifically citing *Dickinson,* has recently ruled that loan production offices constitute branch banking within the North Carolina statute.[1] Using the example of an

[1] These loan production offices have recently been specifically approved for national banks. 33 F.R. 11812 (August 14, 1968).

automobile dealer who relays the loan application information to the bank, which must then approve the loan, the Commissioner has written: " * * * it is my opinion that the automobile dealer is acting as the agent for the bank and the bank is in fact making a loan at the automobile dealer's place of business. In my opinion such course of dealing constitutes carrying on the business of banking at the automobile dealer's place of business and, therfeore, would be an unauthorized engaging in the banking business at the location in question unless the bank was authorized to conduct a branch bank at such location." Letter dated December 23, 1968, to Mr. Frank L. Harrelson, Commissioner of Banks.

Using this reasoning, even an independent armored car operation, such as Brinks, could be outlawed in some states under the *Dickinson* decision if it operated under contract with a bank, as of course it must if it is to transport the bank's funds.[2]

In fact, under the North Carolina interpretation, as under the District Court's comments in the *Bank of Cornelia* case, virtually any off-premises activities could be enjoined as unauthorized branching. The seriousness of such a development can be gauged by an examination of typical activities by a national bank in the state, Amicus North Carolina National Bank. That bank is part of the BankAmericard credit card operation; finances new cars through automobile dealers; closes loans off premises; solicits new businesses, loans, deposits and trust accounts away from its office, and engages in a number of correspondent bank activities. Similarly, Amicus The Union National Bank of North

[2] By way of example, Amicus Manufacturers National Bank of Detroit uses Brinks, and Amicus The State National Bank of Connecticut uses Federal Amored Car Service of Bridgeport.

Carolina operates a charge card plan; sells data processing services, and carries on a courier service to pick up cash letters and data processing work for correspondent banks in a several-state area and for nonbank customers who use the bank's data processing services for payroll, billing, and other record maintenance.[3]

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[3] Off-premises activities are not restricted to any one section of the country. Thus, Amicus Canal National Bank, Portland, Maine, engages in a number of such activities which might possibly come under the *Dickinson* rationale: money order sales through bank customers (savings banks and retailers); the use of Post Office lock box arrangements; procedures by which trust officers pick up securities at the customer's residence or elsewhere when a trust is being established; the signing of loan agreements, contracts, and trust agreements in law offices and business offices; the use and activities of collectors (bank employees) for the bank's installment loan division, and all outside solicitations. In addition, the bank is considering the purchase and use of automatic deposit machines to be placed in strategic retail locations, and "in-plant" banking, both of which have come under interdiction in other jurisdictions.

New York law provides:

> No bank or trust company or officer, director, agent or employee thereof, shall transact any part of its usual business of banking except * * * [at its principal office and authorized branches. N. Y. Bank. Law § 105(1).]

While the phrase, "usual business of banking," has not to our knowledge been interpreted by either the New York courts or the New York banking authorities, it is possible that any of the following activities normally carried on by many New York banks (in addition to offsite depositories and the armored car and messenger services involved in *Dickinson*) might be challenged if conducted by a bank at a non-branch location: loan solicitation and servicing (including the servicing of mortgage loans made by other banks or financial institutions), factoring, equipment leasing, mortgage warehousing, data processing, accounting and bookkeeping services, sale of travelers' checks and money orders and solicitation of bank credit card customers. In regard to the sale of traveler's checks by agents of a bank, see *Bank of America* v. *Lima*, 103 F. Supp. 916 (D. Mass. 1952).

As in North Carolina, both the Banking Commissioner and the Attorney General of Illinois have recently ruled that all off-premises activities of banks are prohibited by the Illinois Banking Act (as revised 1968), 16½ § 106.[4] Specifically, they have outlawed any mechanical device, such as a "Lectro-Teller," in which checks and funds are placed by bank customers for delivery to the bank, and which are located at places other than the bank pursuant to an agreement between the customer and the bank.[5] In the same opinions, they also outlawed loan production offices, which they described as offices apart from the main bank where preliminaries for loans are conducted with prospective borrowers. This ruling was made even though "the finalization of loans so initiated occurs at the main bank * * *." In his letter of September 26, the Commissioner specifically cited and relied on the Fifth Circuit's *Dickinson* decision.

Similar loan production offices, where a car or appliance dealer makes a loan to a customer on behalf of the bank, are maintained by a number of the Amicus banks, including the Virginia National Bank. And Amicus First National Bank of Arizona has some 50 "Lectro-Tellers" distributed in supermarkets, drug stores and the enclosed malls of four regional shopping centers. In these same malls, it also has night-drop

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[4] This section provides: "No bank shall establish or maintain more than one banking house, or receive deposits or pay checks at any other place than such banking house, and no bank shall establish or maintain in this or any other state of the United States any branch bank, nor shall it establish or maintain in this State any branch office or additional office or agency for the purpose of conducting any of its business."

[5] Commissioner's letters of September 26, 1968, and November 26, 1968, to all Illinois banks; Attorney General's letter to the Commissioner dated November 22, 1968 (File No. UP-2023).

facilities. In both instances the facilities are operated by Atlas Services under contract with the bank, but if the North Carolina Attorney General's opinion is valid, the operator of a service could, under the laws of some states, be deemed merely the agent of the bank, so that the service could be converted from an independent operation into branch banking. Yet "deposit machines" have been specifically authorized for national banks by par. 7491 of the Comptroller's Manual for National Banks.

In a letter dated December 21, 1959, the Attorney General of Michigan wrote the Banking Commissioner his opinion (No. 3464) that a mobile banking service, which moved from location to location in order to better service the bank's customers, was clearly a branch banking operation which would violate Michigan's requirement of a stationary banking operation. Opinions, Attorney General, Vol. 1, 1959-60, p. 238. On the other hand, a state bank in Pittsville, Massachusetts—the City Savings Bank—has been given permission by the state Commissioner to operate just such a mobile bank.[6]

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[6] As mentioned above, a number of banks maintain data processing centers and administrative offices off premises. Many larger banks now do most of their data processing and paper work at administrative buildings which are not connected with a certified main office or branch. Customers may or may not visit these offices, depending on the bank. Thus, the national bank involved in *Wingate* v. *Industrial National Bank of Rhode Island*, 1st Cir., No. 7186, docketed August 23, 1968, where plaintiff is challenging the right of a national bank to offer data processing services to other banks and bank customers, has established a $5 million underground, bomb-proof, computer center in the suburbs of Providence, about ten miles from the bank's main office. Other illustrations are the Bank of America, located in California, which for years maintained representative offices in

As to national credit cards, the Court can imagine the extraordinary confusion that would result if these operations were treated as branching under the various state statutes—prohibited entirely in some states and allowed under completely varying conditions in all the others.

Still another state that graphically illustrates the danger of the *Dickinson* rationale is Texas. Both the Texas Constitution (Art. XVI, § 16)[7] and a Texas statute (Texas Banking Code of 1943, as amended, Title 16, Art. 342-903) prohibit branch banking. The constitutional provision has been broadly interpreted in a 38-page letter from the State Attorney General to the State Banking Board (August 18, 1952) as reaching many more activities than "technical branch banking" (p. 9). He ruled, for example, that "chain and group banking are just as violative of the Texas Constitution as branch banking" (p. 11), and that the constitutional provision "was intended to effectuate a State policy requiring that each banking corporation operate as an independent unit" (p. 36).[8] Therefore,

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New York, Chicago, and Washington, D. C.; and Riggs National Bank of Washington, D. C., which once maintained its entire trust department in a separate building. Even more importantly, virtually all money-center banks now have offices the primary function of which is to travel and solicit new business or service existing business from major national corporations.

[7] "Such body corporate [with banking and discounting privileges] shall not be authorized to engage in business at more than one place which shall be designated in its charter."

[8] This ruling is squarely contrary to the holding of the federal courts that chain banking is not impermissible branching insofar as national banks are concerned. *First National Bank in Billings* v. *First Bank Stock Corp.*, 306 F. 2d 937 (9th Cir. 1962); *Camden Trust Co.* v. *Gidney*, 112 U.S. App. D.C. 197, 301 F. 2d 521, *cert. denied*, 369 U.S. 886 (1962).

it violated the Constitution for one bank to organize separate corporate bodies and then dominate or control them "to the extent of indirectly engaging in banking business through another ostensibly independent bank" (p. 36).[9] When this interpretation is correlated with the *Dickinson* decision, it is clear that a state Banking Commissioner could, by departmental order as distinguished from legislative fiat, prohibit a registered bank holding company from owning interests in more than one bank. This would defeat the Congressional intent and seriously jeopardize the authority of federal control over registered bank holding companies.

The disparity in treatment that could ensue is also illustrated by the fact that while local commissions interpret state laws in Florida and Georgia as prohibiting the operation of armored car services by banks, California law *compels* the use of such services to and from certain depositors.

Thus, Section 53739 of the California Government Code reads: "*Expense of Transporting Money.* The depositary shall bear the expenses of transportation of money to and from the depository." Section 53630(b) provides: "(b) 'Depository' means bank in which the moneys of a local agency are deposited.'" And Section 53630(a) reads: "(a) 'Local agency' means county, city, municipality, or other public or municipal corporation." Under these sections, it becomes mandatory for banks to provide armed car service for the

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[9] See also letter from the Attorney General of Texas to the Banking Commissioner (Opinion No. WW-159) dated July 3, 1957, and *Texas ex rel. Falkner* v. *National Bank of Commerce*, 290 F. 2d 229 (5th Cir.), *cert. denied*, 368 U.S. 832 (1961).

transportation of money to and from the offices of the local agencies defined in the statute.[10]

It must be emphasized that even disregarding the varying interpretations of branch banking that have been or may be rendered by state officials, the fact is that state statutes themselves vary drastically in their treatment of the subject. As pointed out above, some states, like Florida, Georgia, Texas and Illinois, prohibit branch banking altogether. Others allow branches but have disparate requirements in establishing a branch.

For example, Connecticut allows branches, with the approval of the state Commissioner, to be operated by a bank (with a combined capital and surplus of at least $1,000,000) within the same town as the main office or within other towns where no state or national banks are located, assuming a number of conditions are met. Conn. Gen. Stat. (as amended), § 36-59. Michigan allows branches generally within the same city as the main office or within a city or village in the same or a contiguous county not more than 25 miles from the principal office. *Compiled Laws of Mich.* of 1948 (as amended), §§ 487.34, 487.34a, 487.34b. New Hampshire allows branches to be established by a bank (with no restrictions on the amount of capital), after a public hearing, in the same town as the principal office, in any contiguous town with no other banks, and in any non-contiguous town within 15 miles of the principal office if no other bank is within 10 miles of the proposed branch. N.H. Stat. §§ 384-8:1, 384.B:2.

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[10] Amicus Bank of America National Trust and Savings Association, pursuant to these sections, regularly provides armored car messenger service to and from these local agencies.

The Code of Vermont, on the other hand, allows a bank, with no restriction on capital, to establish branches after a public hearing if the branches will "promote the general good of the state," so long as they do not have certain anti-competitive effects, harm depositors, etc. Vt. Code Title 8, §§ 501-601a. The Massachusetts statute limits branches to a single county. Mass. Gen. Laws, Ch. 172 § 11.

The number of branches operated by any one bank—and therefor the complexity of the problem—also vary widely from bank to bank. Among the Amicus banks, for example, First Union National Bank of North Carolina has 117 offices in 58 communities in North Carolina; National Bank of Detroit operates 100 banking offices, including one in London, England; The State National Bank of Connecticut has 35 full-service offices located in 21 communities and a separate Computer Center in Fairfield; Howard National Bank and Trust Company has 13 banking offices in Vermont; Indian Head National Bank has one main office and two branches, all in New Hampshire; whereas Continental National Bank of Fort Worth and First Security National Bank of Beaumont each has only one office. Most banks serve only one state, but Exchange National Bank of Chicago, by way of example, operates four offices that cover six states, so that the laws of *each* state as to what constitutes banking would come into play.

The Amicus banks stress to the Court that these varying activities, practices, statutes and interpretations spell nothing but trouble in the administration of federal banking laws throughout the country. As pointed out by the Solicitor General, "It is inconceivable that, without expressly so providing, Congress

could have intended that the lawfulness of all these functions [performed by banks] turn on state definitions of 'branch' " (Petition, p. 12).

It was well settled, at least until the *Dickinson* opinion, that the National Bank Act constituted "* * * by itself a complete system for the establishment and government of national banks * * *." *Cook County National Bank* v. *United States,* 107 U.S. 445, 448 (1883). Thus, the determination of what is a "ratable" distribution of the assets of an insolvent national bank under 12 U.S.C. § 194 is "one of federal law." *American Surety Co.* v. *Bethlehem National Bank,* 314 U.S. 314, 316 (1941); see also *D'Oench, Durme & Co., Inc.* v. *FDIC,* 315 U.S. 447 (1942). And in *Downey* v. *City of Yonkers,* 106 F.2d 69, 73 (2d Cir. 1939), *aff'd,* 309 U.S. 590 (1940), the court held: "It is well settled that the distribution of assets of an insolvent national bank is governed by federal law and that state laws which attempt to create preferences which arise at the time of insolvency are to be disregarded." When a policy is involved upon which Congress has legislated, the validity of a note given to a national bank to purchase stock, "* * * though left by the statute to judicial determination * * * involves decision of a federal, not a state question." *Deitrick* v. *Greaney,* 309 U.S. 190, 201 (1940). Of particular significance is Judge Learned Hand's opinion for the Court in *FDIC* v. *Tremaine,* 133 F.2d 827 (2d Cir. 1943). The opinion states that in 1930,

> * * * avowedly in order to enable national banks to compete with state banks for the deposit of the "public money" of the states in which they did business—§ 90 was amended by providing that a national bank might also, "upon the deposit with

> it of public money of a State or any political subdivision thereof, give security * * * of the same kind as is authorized by the law of the State * * * in the case of other banking institutions in the State. [133 F.2d at 828-829.]

Notwithstanding that the statute involved was enacted "* * * to enable national banks to compete with state banks * * *," and notwithstanding that the question was what constituted "public money" of a state or political subdivision thereof, the court held that:

> that phrase was to be determined as a federal question: i.e., that Congress did not mean to make it dependent upon whether the deposits secured were deemed "public money" according to the law of the State where the security was given. [133 F.2d at 829.]

These cases involving the National Bank Act are merely applying familiar doctrine that "* * * a federal statute may not be set at naught, or its benefits denied, by state statutes or common law rules." *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173, 176 (1942). National banking is an area "* * * within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law." *Sola Electric Co., supra,* 317 U.S. at 176. In short, words appearing in a federal statute, whether or not having a fixed meaning under state law, must be interpreted according to federal law. *New York* v. *Feiring,* 313 U.S. 283, 285 (1941). *Dickinson* held otherwise.

The petitioner in No. 777 and the Solicitor General in No. 932 noted a number of cases which conflict with

the ruling below. Added to these should be *Rushton* v. *Michigan National Bank*, 208 Mich. 417, 299 N.W. 129 (Sup. Ct. 1941), which held that the state Banking Commissioner need not approve a national bank's branch application.[11]

We respectfully urge the Court to grant certiorari, reverse the Fifth Circuit opinion, and restore the orderly administration of the federal banking laws.

Respectfully submitted,

E. Barrett Prettyman, Jr.
Hogan & Hartson
815 Connecticut Avenue, N. W.
Washington, D. C. 20006
*Attorney for Amici Curiae*

[11] It should be noted that the Fifth Circuit decision went off on a matter hardly discussed in argument. Both parties and the Court, prior to the decision, treated the case as one involving the question whether armored car messengers received "deposits" within the meaning of § 36(f). In fact, the reply brief of the Florida Commissioner stated that "* * * the basic decisions regarding branching, *including the definition thereof*, were made by Congress in the 1927 McFadden Act" (p. 15; emphasis in original).